IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3587 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABHECHAND MANEKCHAND OIL MILL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3587 of 1992

MR DM THAKKAR for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 23/01/2004

ORAL JUDGEMENT

The petitioner challenges the order dated 27.1.1989 made by the District Supply Officer Junagadh, confiscating 200 bags of groundnut of oil, weighing 6400

kilograms, valued at Rs.33,600/- under the provisions of Section 6A of the Essential Commodities Act and, the appellate order dated 29.12.1990, made under Section 6C of the said Act, dismissing the appeal and confirming the order of confiscation.

2. The learned counsel appearing for the petitioner, contended that, principles of natural justice were violated because, copy of the statement of Govind Narayan, on which, the reliance was placed by the District Supply Officer, was not supplied to the petitioner. It was also contended that the concerned authority had not applied its mind on the question of quantum of punishment and, the entire stock of 6400 kilograms, which was seized, was ordered to be confiscated. Therefore, matter, ought to be considered afresh, by the authority concerned, on the question of quantum of punishment.

3. It is clear from the record that, a show-cause notice was issued on 29.12.1988 by RPAD to the petitioner, incorporating the contents of the statements, made by Govind Narayan and others. It was stated that, as per the statement of Dhiraj Lal, 155 bags of groundnut were found in the Truck. As per the Driver's statement, a blank voucher was received, while, as per the statement of Dhiraj Lal, a written voucher was issued by the petitioner and, he, only put a signature. In the show-cause notice, it was clearly mentioned that, in the voucher, on which, the reliance was sought to be placed by the petitioner during the inquiry, it was stated that 200 bags of groundnut were purchased from Dhiraj Lal, while, Govind Narayan had stated that he had sold only 45 bags and that too, to Dhiraj Lal and not to the petitioner. Govind Narayan had stated that he had not received any amount from the petitioner and, that, there was no signature of Govind Narayan in the voucher and that no amount was due from the petitioner to him. In the show-cause notice, it was alleged that, on the facts mentioned therein, there was a violation of the provisions of Section 23 and 24 of the Gujarat Essential Articles Orders, 1981 and also of various conditions of the licence. The petitioner was called upon to show cause, why the entire stock seized, should not be confiscated under the provisions of Section 6A of the Essential Commodities Act, 1955. It was also mentioned in the show cause notice, issued under Section 6B of the Act that, the petitioner may file a reply and make oral representation at the personal hearing, if so desired and, that, if the petitioner desired to examine the record and obtain copies, he should do so prior to the

date of the hearing, by coming in the office.

4. The District Supply Officer, in the impugned order, at Annexure-B, has noted that, the hearing of the show-cause notice was fixed on 17.1.1989 and, on that day, the appellant had remained present and sought an adjournment by an application. The matter, was, therefore, adjourned to 23.1.1989. Though, the petitioner was aware of the said date of hearing, no written reply was submitted and, it appeared to the concerned authority that, an attempt was made to deliberately delay the proceedings. The order of confiscation, therefore, came to be passed. The appellate authority heard the advocate appearing for the present petitioner and came to the finding that, except the first allegation, all other allegations were duly established.

5. Since, it was open for the petitioner to examine the record and obtain copies, which opportunity was offered under the show-cause notice but, the petitioner, chose not to file even a written reply nor did he appeared on the adjourned date of hearing, which was sought by him, no fault can be found with the authority in the matter, on the ground that, statement of Govind Narayan was not made available to him. Apart from that fact, the substance of statements of Govind Narayan and other persons, who are referred to in the show-cause notice, was recorded in the show-cause notice and the record was made available in the office for inspection and copying by the petitioner. The opportunity, which was so offered, was not availed by the petitioner and, therefore, no grievance could be made at this stage that copy of Govind Narayan's statement was not supplied.

6. On the question of quantum of punishment, it cannot be said that, there was non-application of mind, because, in the show-cause notice, the petitioner was clearly called upon to show-cause, as to why, the entire stock, which was seized, should not be confiscated. It cannot, therefore, be said that there was non-application of mind on the question of quantum of punishment.

7. The contention that, there was no violation of the provisions of Section 23, which related to maintenance of register of accounts, is misconceived because, even if, an incorrect entry is made in respect of stock, it can be said that the register is not properly maintained.

8. On going through the impugned orders, it is clear

that the concerned authorities have acted in lawful exercise of their jurisdiction and the orders made in accordance with law and, on the basis of the material on record warranting no interference by this Court. The petition, is, therefore, rejected. Rule is discharged with no order as to costs.

(R.K.Abichandani,J)

Jayanti*